

CITY OF MARLBOROUGH
BOARD OF HEALTH POSTING

Meeting Name: Marlborough Board of Health

Date: February 3, 2015

Time: 6:30 PM

Location: Marlborough High School, 3rd Floor, Science Lecture Hall, 431 Bolton Street,
Marlborough, MA 01752

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Agenda Items to be addressed:

New Business:

1. Review January 6, 2015 BOH Minutes
2. Public Hearing of Draft Tobacco Regulations
3. Sanitarian's Report
4. Nurses Report

Old Business

5. Update on Sully's Restaurant
6. Update on Prospector Restaurant

THE LISTING OF TOPICS THAT THE CHAIR REASONABLY ANTICIPATES WILL BE DISCUSSED AT THE MEETING IS NOT INTENDED AS A GUARANTEE OF THE TOPICS THAT WILL HAVE BEEN DISCUSSED. NOT ALL TOPICS LISTED MAY IN FACT BE DISCUSSED, AND OTHER TOPICS NOT LISTED MAY ALSO BE BROUGHT UP FOR DISCUSSION TO THE EXTENT PERMITTED BY LAW.

Marlborough Board of Health Meeting Minutes January 6, 2014
City Hall, 3rd Floor, Memorial Hall

CALL TO ORDER: James Griffin, Chairman call the meeting to order at 6:45

PRESENT: James Griffin, Chairman (JG); John Curran, M.D., Vice Chair (JC); Robin Williams, Member (RW); Steven Ward Interim Public Health Director; Tina Nolin, Senior Clerk.

Administrative:

1: Minutes Review: The board reviewed the minutes of the December 2, 2014 meeting. RW made a motion to approve the minutes of the December 2 meeting and place on file. JC seconded. Motion carried 3-0

New Business:

2A: Tobacco Regulation Update

DJ Wilson, Tobacco Control from Boston, presented regulations with requested definitions added (Nursing Homes, Bed & Breakfasts, Hotels/Motels and Municipal Buildings) and additional language added to Section 4 (Smoking Prohibited) that specified and defined the "no smoking regulation within 15 feet of any municipal building entrance way accessible to the public." There was unanimous consensus among Board members regarding the new language.

DJ presented information on conducting the tobacco regulation public hearing scheduled for February 3rd.

Steve W. updated Board on the Health Departments outreach efforts to community and city stakeholders, and its future outreach efforts to tobacco vendors.

Steve W. suggested for the Board's consideration two meetings in February 1) devoted to the public hearing regarding the tobacco regulations and 2) meeting to address general monthly BOH issues. There was unanimous consensus among the Board to hold the two meetings.

3: Sully's First Edition Pub (Hearing)

Richard Sullivan of First Edition Pub appeared for the second time before the Board for continued multiple and repeat violations of the 1999 Food Code as determined in recent food inspections. Maureen Lee, current Food Consultant for the City presented her latest inspection findings, showing a lack of progress on significant violations. Steve Ward presented for the Board's consideration the recommendations of the Health Department, including a new time table, which was read into the public record.

JC motioned to accept the written recommendation document/letter read into the public record. RW seconded the motion. Motioned carried 3-0.

4: Sisters of St. Anne's (Variance Request – 2-Bay Sink)

Paul Gaudet appeared before the Board to request approval to continue with his establishment's current 2-Bay sink and emergency sanitizing policy, and not to be required to install a 3-bay sink. After a lengthy discussion there was consensus among the Board to approve Sisters of St Anne's request to continue with their current 2-bay sink and appropriate sanitization policy for the time being. However, there was also Board consensus that Marlborough would be moving toward mandatory 3-bay sinks in most establishments in the foreseeable future, but that this would require education, roll-out time and staff to implement.

5: Prospector (Status Update)

Maureen Lee, food inspector for the city, confirmed that she had not been to the Prospector for final inspection, but that she had spoken to the plumber who reported that the rough plumbing was complete and presented the paper work showing that the actual sink would be in Thursday of this week (Jan 8) at which time he would install it. Maureen agreed to inspect after the January 8th date.

6: Fee Schedule

Steve W. presented a proposed new Fee Schedule for the Health Department and reviewed with members the current versus new fees, as well as several proposed date changes for permits and licenses. Steve W. informed that this was only one of several iterations of the schedule over the following few months, and that the Mayor's Office was currently working on a fee survey as part of the process. A specific mention of a new \$75 surcharge for food re-inspections to cover unanticipated work for extra inspection was called out and briefly discussed. Future discussion on the fee schedule is anticipated in future BOH meetings.

7: DPW YOP

RW motioned to accept if the Conservation Commission feels it is complete. JC seconded. Motion passed 3-0.

Additional Business: Informational Purposes Only

From the Interim Administrator/Supervisor:

Board was updated on Health Department's ongoing reorganization & restructuring, as well as changes in practices at the Health Department, e.g., time logs and project spreadsheets that would enable accurate determination of long term staffing needs. Board apprised of the confirmation that consultants Peter Wilner and Dan Ottenheimer would both be coming on board to assist the department in administrative/program development.

Next Monthly meeting is the Public Hearing for Tobacco Regulations Tuesday, February 3, 2015 – 6:30 pm, with a second meeting being held on Tuesday, February 17th at 6:30 pm. JG motioned to adjourn; seconded by RW at 9:55 pm (Motion carried 3-0)

Respectfully submitted,

James Griffin, Chairman

MARLBOROUGH BOARD OF HEALTH INTRODUCTORY STATEMENTS FOR PUBLIC HEARINGS

This public hearing is to discuss proposed tobacco control regulations for the City of Marlborough. Copies of the proposal have been made available at the Board of Health office.

The Marlborough Board of Health is a three-member appointed board. The purpose of the board is to promote and protect the public health for the citizens of Marlboro. They derive their authority from the Massachusetts Legislature. The members are:

1. James Griffin, Chair
2. John Curran, MD, Member
3. Robin Williams, Member

Steven Ward is the Interim Director of Public Health for Marlborough. The Health Agent is an employee of the municipality. The Director of Public Health duties are to carry out the wishes of the Board, assist in the enforcement of their regulations and deal with the day-to-day operations of the Board of Health.

The Board will permit each person wishing to testify three minutes to do so. To testify, please sign in with your name, address or professional affiliation. You will be called to testify in the order in which you signed up.

The Board will not be entertaining questions. This hearing is purely to listen to people's opinions on the two draft regulations. If you wish to not speak, or have more to say beyond your three-minute testimony, the Board will be accepting written comment up until February 13, 2015.

Written testimony can be sent to Marlborough Board of Health, City Hall, 140 Main Street, Lower Level, Marlborough, MA 01752.

At our meeting on February 17, 2015, the Board will be discussing the draft regulations, the testimony received tonight and any written testimony and then decide on next steps. This meeting will not be a continuation of the public hearing and no testimony from the audience will be accepted at that meeting.

**PUBLIC HEARING BEFORE THE MARLBOROUGH BOARD OF HEALTH
FEBRUARY 3, 2015**

Welcome to the Marlborough Board of Health Public Hearing to discuss two proposals to regulate the Restricting the Sale of Tobacco Products and Prohibiting Smoking in Workplaces and Public Places. We appreciate your taking the time to be here. A copy of the regulations is available at the Board of Health Offices at 140 Main St. In the interest of time, we ask that you adhere to the following ground rules:

1. Any person wishing to make comments should sign in. The sign-in sheet is located on the Board of Health table. You will be called to testify in the order in which you signed up.
2. Before addressing the Board of Health, you must have read the proposal.
3. When addressing the Board of Health, you must first identify yourself by name, address and any professional affiliation you may have that impacts your comments.
4. Identify the section of the proposal that you wish to comment on.
5. Please limit your comments to 3 minutes so that other members of the audience will have a chance to speak.
6. Please be considerate of those persons speaking, whether you agree or disagree with them and refrain from commenting out of turn.
7. A written comment period, for those who are unable to attend or do not wish to testify at the public hearing, will be allowed. Written testimony will be accepted by the Board of Health until February 13, 2015. Please send comments to:
Marlborough Board of Health, City Hall, 140 Main Street, Lower Level,
Marlborough, MA 01752.
8. Any person showing verbal disrespect to those speaking will be asked to leave the public hearing.

Thank you for your cooperation.

Regulation of the Marlborough Board of Health Restricting the Sale of Tobacco Products

A. Statement of Purpose:

Whereas there exists conclusive evidence that tobacco smoking causes cancer, respiratory and cardiac diseases, negative birth outcomes, irritations to the eyes, nose and throat¹;

Whereas among the 15.7% of students nationwide who currently smoke cigarettes and were less than 18 years old, 14.1% usually obtained them by buying them in a store (i.e. convenience store, supermarket, or discount store) or gas station²;

Whereas nationally in 2009, 72% of high school smokers and 66% of middle school smokers were not asked to show proof of age when purchasing cigarettes³;

Whereas the U.S. Department of Health and Human Services has concluded that nicotine is as addictive as cocaine or heroin⁴ and the Surgeon General found that nicotine exposure during adolescence, a critical window for brain development, may have lasting adverse consequences for brain development⁵;

Whereas despite state laws prohibiting the sale of tobacco products to minors, access by minors to tobacco products is a major public health problem;

Whereas research has shown that raising the minimum legal drinking age to 21 has reduced alcohol consumption among youth and protected drinkers from long-term negative outcomes in adulthood, including alcohol and other drug dependence⁶;

More than 80 percent of all adult smokers begin smoking before the age of 18; and more than 90 percent do so before leaving their teens⁷

¹ Center for Disease Control and Prevention, (CDC) (2012), *Health Effects of Cigarette Smoking Fact Sheet*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/fact_sheets/health_effects/effects_cig_smoking/index.htm.

² CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (Morbidity and Mortality Weekly Report (MMWR) 2010: 59, 11 (No. SS-55)) Retrieved from: <http://www.cdc.gov/HealthyYouth/yrbs/index.htm>.

³ CDC Office of Smoking and Health, National *Youth Tobacco Survey, 2009*. Analysis by the American Lung Association (ALA), Research and Program Services Division using SPSS software, as reported in "Trends in Tobacco Use", ALA Research and Program Services, Epidemiology and Statistics Unit, July 2011. Retrieved from: www.lung.org/finding-cures/our-research/trend-reports/Tobacco-Trend-Report.pdf.

⁴ CDC (2010), *How Tobacco Smoke Causes Disease: The Biology and Behavioral Basis for Smoking-Attributable Disease*. Retrieved from: http://www.cdc.gov/tobacco/data_statistics/sgr/2010/.

⁵ U.S. Department of Health and Human Services. 2014. *The Health Consequences of Smoking – 50 Years of Progress: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 122. Retrieved from: <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/full-report.pdf>.

⁶ DeJong W, Blanchette J 2013. "Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States." *J. Stud. Alcohol Drugs, Supplement 17*, 108 – 115, 2014.

⁷ SAMHSA, Calculated based on data in 2011 National Survey on Drug Use and Health.

Whereas many non-cigarette tobacco products, such as cigars and cigarillos, can be sold in a single “dose;” enjoy a relatively low tax as compared to cigarettes; are available in fruit, candy and alcohol flavors; and are popular among youth⁸;

Whereas sales of flavored little cigars increased by 23% between 2008 and 2010⁹; and the top three most popular cigar brands among African-American youth aged 12-17 are the flavored and low-cost Black & Mild, White Owl, and Swisher Sweets;¹⁰

Whereas the federal Family Smoking Prevention and Tobacco Control Act (FSPTCA), enacted in 2009, prohibited candy- and fruit-flavored cigarettes,¹¹ largely because these flavored products were marketed to youth and young adults,¹² and younger smokers were more likely to have tried these products than older smokers;¹³

Whereas although the manufacture and distribution of flavored cigarettes (excluding menthol) is banned by federal law,¹⁴ neither federal nor Massachusetts laws restrict sales of flavored non-cigarette tobacco products, such as cigars, cigarillos, smokeless tobacco, hookah tobacco, and electronic devices and the nicotine solutions used in these devices;

Whereas the U.S. Food and Drug Administration and the U.S. Surgeon General have stated that flavored tobacco products are considered to be “starter” products that help establish smoking habits that can lead to long-term addiction;¹⁵

Whereas data from the National Youth Tobacco Survey indicate that more than two-fifths of U.S. middle and high school smokers report using flavored little cigars or flavored cigarettes;¹⁶

⁸ CDC (2009), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2010: 59, 12, note 5). Retrieved from: <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

⁹ Delnevo, C., Flavored Little Cigars memo, September 21, 2011, from Neilson market scanner data.

¹⁰ SAMSHA, Analysis of data from the 2011 *National Survey on Drug Use and Health*.

¹¹ 21 U.S.C. § 387g.

¹² Carpenter CM, Wayne GF, Pauly JL, et al. 2005. “New Cigarette Brands with Flavors that Appeal to Youth: Tobacco Marketing Strategies.” *Health Affairs*. 24(6): 1601–1610; Lewis M and Wackowski O. 2006. “Dealing with an Innovative Industry: A Look at Flavored Cigarettes Promoted by Mainstream Brands.” *American Journal of Public Health*. 96(2): 244–251; Connolly GN. 2004. “Sweet and Spicy Flavours: New Brands for Minorities and Youth.” *Tobacco Control*. 13(3): 211–212; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 537, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹³ U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁴ 21 U.S.C. § 387g

¹⁵ Food and Drug Administration. 2011. *Fact Sheet: Flavored Tobacco Products*, www.fda.gov/downloads/TobaccoProducts/ProtectingKidsfromTobacco/FlavoredTobacco/UCM183214.pdf; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 539, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁶ King BA, Tynan MA, Dube SR, et al. 2013. “Flavored-Little-Cigar and Flavored-Cigarette Use Among U.S. Middle and High School Students.” *Journal of Adolescent Health*. [Article in press], www.jahonline.org/article/S1054-139X%2813%2900415-1/abstract.

Whereas the U.S. Centers for Disease Control and Prevention has reported that electronic cigarette use among middle and high school students doubled from 2011 to 2012;¹⁷

Whereas nicotine solutions, which are consumed via electronic or battery-operated delivery smoking devices such as electronic cigarettes, are sold in dozens of flavors that appeal to youth, such as cotton candy and bubble gum;¹⁸

Whereas in a lab analysis conducted by the FDA, electronic cigarette cartridges that were labeled as containing no nicotine actually had low levels of nicotine present in all cartridges tested, except for one¹⁹;

Whereas according to the CDC's youth risk behavior surveillance system, the percentage of high school students in Massachusetts who reported the use of cigars within the past 30 days went from 11.8% in 2003 to 14.3% in 2011²⁰;

Whereas survey results show that more youth report that they have smoked a cigar product when it is mentioned by name, than report that they smoked a cigar in general, indicating that cigar use among youth is underreported²¹;

Whereas in Massachusetts, youth use of all other tobacco products, including cigars, rose from 13.3% in 2003 to 17.6% in 2009, and was higher than the rate of current cigarette use (16%) for the first time in history²²;

Whereas research shows that increased cigar prices significantly decreased the probability of male adolescent cigar use and a 10% increase in cigar prices would reduce use by 3.4%²³;

Whereas nicotine levels in cigars are generally much higher than nicotine levels in cigarettes²⁴;

¹⁷ Centers for Disease Control & Prevention. 2013. "Electronic Cigarette Use Among Middle and High School Students—United States, 2011–2012," *Morbidity and Mortality Weekly Report (MMWR)* 62(35): 729–730.

¹⁸ Cameron JM, Howell DN, White JR, et al. 2013. "Variable and Potentially Fatal Amounts of Nicotine in E-cigarette Nicotine Solutions." *Tobacco Control*. [Electronic publication ahead of print], <http://tobaccocontrol.bmj.com/content/early/2013/02/12/tobaccocontrol-2012-050604.full>; U.S. Department of Health and Human Services. 2012. *Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General*. Atlanta: U.S. National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, p. 549, www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf.

¹⁹ Food and Drug Administration, *Summary of Results: Laboratory Analysis of Electronic Cigarettes Conducted by FDA*, available at: <http://www.fda.gov/newsevents/publichealthfocus/ucm173146.htm>.

²⁰ CDC (2011) *Youth Risk Behavior, Surveillance Summaries* (MMWR 2012: 87 (No SS-61)). Retrieved from: www.cdc.gov; and CDC (2003), *Youth Risk Behavior, Surveillance Summaries* (MMWR 2004: 53, 54 (No. SS-02)).

²¹ 2010 Boston Youth Risk Behavior Study. 16.5% of Boston youth responded that they had ever smoked a fruit or candy flavored cigar, cigarillo or little cigar, while 24.1% reported ever smoking a "Black and Mild" Cigar.

²² Commonwealth of Massachusetts, Data Brief, Trends in Youth Tobacco Use in Massachusetts, 1993-2009. Retrieved from: http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/adolescent_tobacco_use_youth_trends_1993_2009.pdf.

²³ Ringel, J., Wasserman, J., & Andreyeva, T. (2005) *Effects of Public Policy on Adolescents' Cigar Use: Evidence from the National Youth Tobacco Survey*. *American Journal of Public Health*, 95(6), 995-998, doi: 10.2105/AJPH.2003.030411 and cited in *Cigar, Cigarillo and Little Cigar Use among Canadian Youth: Are We Underestimating the Magnitude of this Problem?*, *J. Prim. P.* 2011, Aug; 32(3-4):161-70. Retrieved from: www.ncbi.nlm.nih.gov/pubmed/21809109.

Whereas Non-Residential Roll-Your-Own (RYO) machines located in retail stores enable retailers to sell cigarettes without paying the excise taxes that are imposed on conventionally manufactured cigarettes. High excise taxes encourage adult smokers to quit²⁵ and high prices deter youth from starting.²⁶ Inexpensive cigarettes, like those produced from RYO machines, promote the use of tobacco, resulting in a negative impact on public health and increased health care costs, and severely undercut the evidence-based public health benefit of imposing high excise taxes on tobacco;

Whereas it is estimated that 90% of what is being sold as pipe tobacco is actually being used in Non-Residential RYO machines. Pipe tobacco shipments went from 11.5 million pounds in 2009 to 22.4 million pounds in 2010. Traditional RYO tobacco shipments dropped from 11.2 million pounds to 5.8 million pounds; and cigarette shipments dropped from 308.6 billion sticks to 292.7 billion sticks according to the December 2010 statistical report released by the U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB)²⁷;

Whereas the sale of tobacco products is incompatible with the mission of health care institutions because these products are detrimental to the public health and their presence in health care institutions undermine efforts to educate patients on the safe and effective use of medication, including cessation medication;

Whereas educational institutions sell tobacco products to a younger population, who is particularly at risk for becoming smokers and such sale of tobacco products is incompatible with the mission of educational institutions that educate a younger population about social, environmental and health risks and harms;

Whereas the Massachusetts Supreme Judicial Court has held that “. . . [t]he right to engage in business must yield to the paramount right of government to protect the public health by any rational means”²⁸.

Now, therefore it is the intention of the Marlborough Board of Health to regulate the sale of tobacco products.

B. Authority:

This regulation is promulgated pursuant to the authority granted to the Marlborough Board of Health by Massachusetts General Laws Chapter 111, Section 31 which states "Boards of health may make reasonable health regulations".

²⁴ National Institute of Health (NIH), National Cancer Institute (NCI) (2010). *Cigar Smoking and Cancer*. Retrieved from: <http://www.cancer.gov/cancertopics/factsheet/Tobacco/cigars>.

²⁵ Eriksen, M., Mackay, J., Ross, H. (2012). *The Tobacco Atlas*, Fourth Edition, American Cancer Society, Chapter 29, p. 80. Retrieved from: www.TobaccoAtlas.org.

²⁶ Chaloupka, F. J. & Liccardo Pacula, R., NIH, NCI (2001). *The Impact of Price on Youth Tobacco Use, Smoking and Tobacco Control Monograph 14: Changing Adolescent Smoking Prevalence* 193 – 200. Retrieved from: <http://dccps.nih.gov/TCRB/monographs/>.

²⁷ TTB (2011). *Statistical Report – Tobacco (2011)* (TTB S 5210-12-2010). Retrieved from: <http://www.ttb.gov/statistics/2010/201012tobacco.pdf>.

²⁸ *Druzik et al v. Board of Health of Haverhill*, 324 Mass.129 (1949).

C. Definitions:

For the purpose of this regulation, the following words shall have the following meanings:

Blunt Wrap: Any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers.

Business Agent: An individual who has been designated by the owner or operator of any establishment to be the manager or otherwise in charge of said establishment.

Cigar: Any roll of tobacco that is wrapped in leaf tobacco or in any substance containing tobacco with or without a tip or mouthpiece not otherwise defined as a cigarette under Massachusetts General Law, Chapter 64C, Section 1, Paragraph 1.

Characterizing flavor: A distinguishable taste or aroma, other than the taste or aroma of tobacco, menthol, mint or wintergreen, imparted or detectable either prior to or during consumption of a tobacco product or component part thereof, including, but not limited to, tastes or aromas relating to any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb or spice; provided, however, that no tobacco product shall be determined to have a characterizing flavor solely because of the provision of ingredient information or the use of additives or flavorings that do not contribute to the distinguishable taste or aroma of the product.

Component part: Any element of a tobacco product, including, but not limited to, the tobacco, filter and paper, but not including any constituent.

Constituent: Any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to a tobacco product during the processing, manufacturing or packaging of the tobacco product. Such term shall include a smoke constituent.

Distinguishable: Perceivable by either the sense of smell or taste.

Educational Institution: Any public or private college, school, professional school, scientific or technical institution, university or other institution furnishing a program of higher education.

Employee: Any individual who performs services for an employer.

Employer: Any individual, partnership, association, corporation, trust or other organized group of individuals that uses the services of one (1) or more employees.

Flavored tobacco product: Any tobacco product or component part thereof that contains a constituent that has or produces a characterizing flavor. A public statement, claim or indicia made or disseminated by the manufacturer of a tobacco product, or by any person authorized or permitted by the manufacturer to make or disseminate public statements concerning such tobacco product, that such tobacco product has or produces a characterizing flavor shall constitute presumptive evidence that the tobacco product is a flavored tobacco product.

Health Care Institution: An individual, partnership, association, corporation or trust or any person or group of persons that provides health care services and employs health care providers licensed, or subject to licensing, by the Massachusetts Department of Public Health under M.G.L. c. 112 or a retail establishment that provides pharmaceutical goods and services and is subject to the provisions of 247 CMR 6.00. Health care institutions include, but are not limited to, hospitals, clinics, health centers, pharmacies, drug stores, doctor offices, optician/optometrist offices and dentist offices.

Minimum Legal Sales Age (MLSA): The age an individual must be before that individual can be sold a tobacco product in the municipality.

Non-Residential Roll-Your-Own (RYO) Machine: A mechanical device made available for use (including to an individual who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the individual's own personal consumption or use) that is capable of making cigarettes, cigars or other tobacco products. RYO machines located in private homes used for solely personal consumption are not Non-Residential RYO machines.

Permit Holder: Any person engaged in the sale or distribution of tobacco products who applies for and receives a tobacco product sales permit or any person who is required to apply for a Tobacco Product Sales Permit pursuant to these regulations, or his or her business agent.

Person: Any individual, firm, partnership, association, corporation, company or organization of any kind, including but not limited to, an owner, operator, manager, proprietor or person in charge of any establishment, business or retail store.

Retail Tobacco Store: An establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale, but not for resale, tobacco products and tobacco paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the minimum legal sales age is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough Board of Health.

Self-Service Display: Any display from which customers may select a tobacco product, as defined herein, without assistance from an employee or store personnel.

Schools: Public or private elementary or secondary schools.

Smoke Constituent: Any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the tobacco product to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product.

Smoking Bar: An establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Tobacco Product: Any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other

means, including, but not limited to: cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff, or electronic cigarettes, electronic cigars, electronic pipes, electronic hookah, or other similar products, regardless of nicotine content, that rely on vaporization or aerosolization. "Tobacco product" includes any component or part of a tobacco product. "Tobacco product" does not include any product that has been approved by the United States Food and Drug Administration either as a tobacco use cessation product or for other medical purposes and which is being marketed and sold or prescribed solely for the approved purpose.

Vending Machine: Any automated or mechanical self-service device, which upon insertion of money, tokens or any other form of payment, dispenses or makes cigarettes or any other tobacco products, as defined herein.

D. Tobacco Sales to Persons Under the Minimum Legal Sales Age Prohibited:

1. No person shall sell tobacco products or permit tobacco products, as defined herein, to be sold to a person under the minimum legal sales age; or not being the individual's parent or legal guardian, give tobacco products, as defined herein, to a person under the minimum legal sales age. The minimum legal sales age in Marlborough is twenty-one (21).

2. Required Signage

- a. In conformance with and in addition to Massachusetts General Law, Chapter 270, Section 7, a copy of Massachusetts General Laws, Chapter 270, Section 6, shall be posted conspicuously by the owner or other person in charge thereof in the shop or other place used to sell tobacco products at retail. The notice shall be provided by the Massachusetts Department of Public Health and made available from the Marlborough Board of Health. The notice shall be at least 48 square inches and shall be posted conspicuously by the permit holder in the retail establishment or other place in such a manner so that it may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than 4 feet or greater than 9 feet from the floor. The owner or other person in charge of a shop or other place used to sell tobacco products at retail shall conspicuously post any additional signs required by the Massachusetts Department of Public Health.
- b. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post signage provided by the Marlborough Board of Health that discloses current referral information about smoking cessation.
- c. The owner or other person in charge of a shop or other place used to sell tobacco products, as defined herein, at retail shall conspicuously post a sign stating that "The sale of tobacco products, including e-cigarettes, to someone under the minimum legal sales age of 21 years is prohibited." The notice shall be no smaller than 8.5 inches by 11 inches and shall be posted conspicuously in the retail establishment or other place in such a manner so that they may be readily seen by a person standing at or approaching the cash register. The notice shall directly face the purchaser and shall not be obstructed from view or placed at a height of less than four (4) feet or greater than nine (9) feet from the floor.

3. Identification: Each person selling or distributing tobacco products, as defined herein, shall verify the age of the purchaser by means of a valid government-issued photographic identification containing the bearer's date of birth that the purchaser is 21 years old or older. Verification is required for any person under the age of 27.

4. All retail sales of tobacco products, as defined herein, must be face-to-face between the seller and the buyer and occur at the permitted location.

E. Tobacco Product Sales Permit:

1. No person shall sell or otherwise distribute tobacco products, as defined herein, within the City of Marlborough without first obtaining a Tobacco Product Sales Permit issued annually by the Marlborough Board of Health. Only owners of establishments with a permanent, non-mobile location in Marlborough are eligible to apply for a permit and sell tobacco products at the specified location in Marlborough.

2. As part of the Tobacco Product Sales Permit application process, the applicant will be provided with the Marlborough regulation. Each applicant is required to sign a statement declaring that the applicant has read said regulation and that the applicant is responsible for instructing any and all employees who will be responsible for tobacco product sales regarding federal, state and local laws regarding the sale of tobacco and this regulation.

3. Each applicant who sells tobacco products is required to provide proof of a current Tobacco Retailer License issued by the Massachusetts Department of Revenue, when required by state law, before a Tobacco Product Sales Permit can be issued.

4. The fee for a Tobacco Product Sales Permit shall be determined by the Marlborough Board of Health annually.

5. A separate permit is required for each retail establishment selling tobacco products, as defined herein.

6. Each Tobacco Product Sales Permit shall be displayed at the retail establishment in a conspicuous place.

7. No Tobacco Product Sales Permit holder shall allow any employee to sell tobacco products, as defined herein, until such employee reads this regulation and federal and state laws regarding the sale of tobacco products and signs a statement, a copy of which will be placed on file in the office of the employer, that he/she has read the regulation and applicable state and federal laws.

8. A Tobacco Product Sales Permit is non-transferable. A new owner of an establishment that sells tobacco products, as defined herein, must apply for a new permit. No new permit will be issued unless and until all outstanding penalties incurred by the previous permit holder are satisfied in full.

9. Issuance of a Tobacco Product Sales Permit shall be conditioned on an applicant's consent to unannounced, periodic inspections of his/her retail establishment to ensure compliance with this regulation.

10. A Tobacco Product Sales Permit will not be renewed if the permit holder has failed to pay all fines issued and the time period to appeal the fines has expired and/or has not satisfied any outstanding permit suspensions.

11. Maximum Number of Tobacco Product Sales Permits.

At any given time, there shall be no more than thirty-eight (38) Tobacco Product Sales Permits issued in Marlborough. No permit renewal will be denied based on the requirements of this subsection except any permit holder who has failed to renew his or her permit within thirty (30) days of expiration will be treated

as a first-time permit applicant. Applicants who purchase a business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein. New applicants for permits who are applying at a time when the maximum number of permits have been issued will be placed on a waiting list and will be eligible to apply for a permit on a “first-come, first-served” basis as issued permits are either not renewed or are returned to the Board of Health.

12. A Tobacco Product Sales Permit shall not be issued to any new applicant for a retail location within 500 feet of a public or private elementary or secondary school as measured by a straight line from the nearest point of the property line of the school to the nearest point of the property line of the site of the applicant’s business premises. Applicants who purchase an existing business that holds a current Tobacco Product Sales Permit at the time of the sale of said business may apply, within sixty (60) days of such sale, for the permit held by the Seller if the Buyer intends to sell tobacco products, as defined herein.

F. Cigar Sales Regulated:

1. No person shall sell or distribute or cause to be sold or distributed a single cigar.
2. No person shall sell or distribute or cause to be sold or distributed any original package of two or more cigars, unless such package is priced for retail sale at \$5.00 or more.
3. This Section shall not apply to:
 - a. The sale or distribution of any single cigar having a retail price of two dollars and fifty cents (\$2.50) or more.
 - b. A person or entity engaged in the business of selling or distributing cigars for commercial purposes to another person or entity engaged in the business of selling or distributing cigars for commercial purposes with the intent to sell or distribute outside the boundaries of Marlborough.
4. The Marlborough Board of Health may adjust from time to time the amounts specified in this Section to reflect changes in the applicable Consumer Price Index by amendment of this regulation.

G. Sale of Flavored Tobacco Products Prohibited:

No person shall sell or distribute or cause to be sold or distributed any flavored tobacco product, except in smoking bars and retail tobacco stores.

H. Prohibition of the Sale of Blunt Wraps:

No person or entity shall sell or distribute blunt wraps in Marlborough.

I. Free Distribution and Coupon Redemption:

No person shall distribute, or cause to be distributed, any free samples of tobacco products, as defined herein. No means, instruments or devices that allow for the redemption of any tobacco products, as defined herein, for free or cigarettes at a price below the minimum retail price determined by the Massachusetts Department of Revenue shall be accepted by any permit holder.

J. Out-of-Package Sales:

The sale or distribution of tobacco products, as defined herein, in any form other than an original factory-wrapped package is prohibited, including the repackaging or dispensing of any tobacco product, as defined herein, for retail sale. No person may sell or cause to be sold or distribute or cause to be distributed any cigarette package that contains fewer than twenty (20) cigarettes, including single cigarettes.

K. Self-Service Displays:

All self-service displays of tobacco products, as defined herein, are prohibited. All humidors including, but not limited to, walk-in humidors must be locked.

L. Vending Machines:

All vending machines containing tobacco products, as defined herein, are prohibited.

M. Non-Residential Roll-Your-Own Machines:

All Non-Residential Roll-Your-Own machines are prohibited.

N. Prohibition of the Sale of Tobacco Products by Health Care Institutions:

No health care institution located in Marlborough shall sell or cause to be sold tobacco products, as defined herein. No retail establishment that operates or has a health care institution within it, such as a pharmacy, optician/optometrist or drug store, shall sell or cause to be sold tobacco products, as defined herein.

O. Prohibition of the Sale of Tobacco Products by Educational Institutions:

No educational institution located in Marlborough shall sell or cause to be sold tobacco products, as defined herein. This includes all educational institutions as well as any retail establishments that operate on the property of an educational institution.

P. Violations:

1. It shall be the responsibility of the establishment, permit holder and/or his or her business agent to ensure compliance with all sections of this regulation. The violator shall receive:
 - a. In the case of a first violation, a fine of one hundred dollars (\$100.00).
 - b. In the case of a second violation within thirty-six (36) months of the date of the current violation, a fine of two hundred dollars (\$200.00) and the Tobacco Product Sales Permit shall be suspended for seven (7) consecutive business days.
 - c. In the case of three or more violations within a thirty-six (36) month period, a fine of three hundred dollars (\$300.00) and the Tobacco Product Sales Permit shall be suspended for thirty (30) consecutive business days.
 - d. In the case of further violations or repeated, egregious violations of this regulation within a thirty-six (36) month period, the Board of Health may revoke a Tobacco Product Sales Permit.
2. Refusal to cooperate with inspections pursuant to this regulation shall result in the suspension of the Tobacco Product Sales Permit for thirty (30) consecutive business days.
3. In addition to the monetary fines set above, any permit holder who engages in the sale or distribution of tobacco products while his or her permit is suspended shall be subject to the suspension of all Board of Health issued permits for thirty (30) consecutive business days.
4. The Marlborough Board of Health shall provide notice of the intent to suspend or revoke a Tobacco Product Sales Permit, which notice shall contain the reasons therefor and establish a time and date for a hearing which date shall be no earlier than seven (7) days after the date of said notice. The permit holder or its business agent shall have an opportunity to be heard at such hearing and shall be notified of the Board of Health's decision and the reasons therefor in writing. After a hearing, the Marlborough Board of Health shall suspend or revoke the Tobacco Product Sales Permit if the Board of Health finds that a violation of this regulation occurred. For purposes of such suspensions or revocations, the Board shall make the determination notwithstanding any separate criminal or non-criminal proceedings brought in court hereunder or under the Massachusetts General Laws for the same offense. All tobacco products, as defined herein, shall be removed from the retail establishment upon suspension or revocation of the Tobacco Product Sales Permit. Failure to remove all tobacco products, as defined herein, shall constitute a separate violation of this regulation.

Q. Non-Criminal Disposition:

Whoever violates any provision of this regulation may be penalized by the non-criminal method of disposition as provided in Massachusetts General Laws, Chapter 40, Section 21D or by filing a criminal complaint at the appropriate venue.

Each day any violation exists shall be deemed to be a separate offense.

R. Enforcement:

Enforcement of this regulation shall be by the Marlborough Board of Health or its designated agent(s).

Any resident who desires to register a complaint pursuant to the regulation may do so by contacting the Marlborough Board of Health or its designated agent(s) and the Board shall investigate.

S. Severability:

If any provision of this regulation is declared invalid or unenforceable, the other provisions shall not be affected thereby but shall continue in full force and effect.

T. Effective Date:

This regulation shall take effect on _____, 2015.

1. _____

2. _____

3. _____

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CITY OF MARLBOROUGH REGULATION PROHIBITING SMOKING IN WORKPLACES and PUBLIC PLACES

SECTION 1

The purpose of this regulation is to protect the health of the employees and general public in the City of Marlborough.

SECTION 2

This regulation is promulgated under the authority granted to the Marlborough Board of Health pursuant to Massachusetts General Laws Chapter 111, Section 31 that "[b]oards of health may make reasonable health regulations." It is also promulgated pursuant to Massachusetts General Laws Chapter 270, Section 22(j) which states in part that "[n]othing in this section shall permit smoking in an area in which smoking is or may hereafter be prohibited by law including, without limitation: any other law or . . . health . . . regulation. Nothing in this section shall preempt further limitation of smoking by the commonwealth . . . or political subdivision of the commonwealth."

SECTION 3

As used in this regulation, the following words shall have the following meanings, unless the context requires otherwise:

Compensation: money, gratuity, privilege, or benefit received from an employer in return for work performed or services rendered.

E-Cigarette: Any electronic device, not approved by the United States Food and Drug Administration, composed of a mouthpiece, heating element, battery and/or electronic circuits that provides a vapor of liquid nicotine to the user, or relies on vaporization of any liquid or solid nicotine. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name.

Employee: an individual or person who performs a service for compensation for an employer at the employer's workplace, including a contract employee, temporary employee, and independent contractor who performs a service in the employer's workplace for more than a *de minimus* amount of time.

Employer: an individual, person, partnership, association, corporation, trust, organization, school, college, university or other educational institution or other legal entity, whether public, quasi-public, private, or non-profit which uses the services of one (1) or more employees at one (1) or more workplaces, at any one (1) time, including the City of Marlborough.

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Enclosed: a space bounded by walls, with or without windows or fenestrations, continuous from floor to ceiling and enclosed by one (1) or more doors, including but not limited to an office, function room or hallway.

Hotels, Motels and B&Bs: Temporary accommodations that are open to the public for rental and are not intended to be a domicile.

Membership association (also known as a private club): A not-for-profit entity that has been established and operates for a charitable, philanthropic, civic, social, benevolent, educational, religious, athletic, recreation or similar purpose, and is comprised of members who collectively belong to: (i) a society, organization or association of a fraternal nature that operates under the lodge system, and having one or more affiliated chapters or branches incorporated in any state; or (ii) a corporation organized under chapter 180; or (iii) an established religious place of worship or instruction in the commonwealth whose real or personal property is exempt from taxation; or (iv) a veterans' organization incorporated or chartered by Congress of the United States, or otherwise, having one or more affiliated chapters by the Congress of the United States, or otherwise, having one or more affiliated chapters or branches incorporated in any state. Except for a religious place of worship or instruction, an entity shall not be a membership association for the purpose of this definition, unless individual membership containing not less than full membership costs and benefits is required for all members of the association for a period of not less than 90 days.

Municipal building: any building owned, leased or operated by the City of Marlborough.

Nursing home: a residential facility licensed pursuant to M.G.L. Ch. 111, Section 71.

Outdoor space: an outdoor area, open to the air at all times and cannot be enclosed by a wall or side covering.

Retail tobacco store: an establishment that is not required to possess a retail food permit whose primary purpose is to sell or offer for sale to consumers, but not for resale, tobacco products and paraphernalia, in which the sale of other products is merely incidental, and in which the entry of persons under the age of 18 is prohibited at all times, and maintains a valid permit for the retail sale of tobacco products as required to be issued by the Marlborough Board of Health.

Smoking (or smoke): the lighting of a cigar, cigarette, pipe or other tobacco product or possessing a lighted cigar, cigarette, pipe or other tobacco or non-tobacco product designed to be combusted and inhaled.

Smoking bar: an establishment that primarily is engaged in the retail sale of tobacco products for consumption by customers on the premises and is required by Mass. General Law Ch. 270, §22 to maintain a valid permit to operate a smoking bar issued by the

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Massachusetts Department of Revenue. "Smoking bar" shall include, but not be limited to, those establishments that are commonly known as "cigar bars" and "hookah bars".

Workplace: an indoor area, structure or facility or a portion thereof, at which one (1) or more employees perform a service for compensation for an employer, other enclosed spaces rented to or otherwise used by the public; and where the employer has the right or authority to exercise control over the space.

Terms not defined herein shall be defined as set forth in M.G.L. Ch. 270, §22 and/or 105 CMR 661. To the extent any of the definitions herein conflict with M.G.L. Ch. 270, §22 and 105 CMR 661, the definition contained in this regulation shall control.

SECTION 4: SMOKING PROHIBITED

- (a) It shall be the responsibility of the employer to provide a smoke free environment for all employees working in an enclosed workplace as well as those workplaces listed in subsection (c) below.
- (b) Smoking is hereby prohibited in Marlborough in accordance with M.G.L. Ch. 270, §22 (commonly known as the "Smoke-free Workplace Law).
- (c) Pursuant to M.G.L. Ch. 270, §22(j) smoking is also hereby prohibited in:
 - 1. Smoking Bars
 - 2. Retail Tobacco Stores
 - 3. Municipal-owned Parks, Playgrounds, Athletic Fields, Beaches
 - 4. Municipal Buildings including property under control of said buildings
OR the area within fifteen feet of any municipal building entranceway accessible to the public, except that this shall not apply to a smoker transiting through such fifteen foot area nor to a smoker approaching an entranceway with the intention of extinguishing a tobacco product.
 - 5. Nursing Homes
 - 6. Membership Associations
 - 7. Hotels, Motels, B&B rooms
 - 8. Public Transportation, Bus and Taxi Waiting Areas
 - 9. Outdoor Space where food and/or beverages are served to the public by employees of restaurants, bars and taverns
- (a) The use of e-cigarettes is prohibited wherever smoking is prohibited per M.G.L. Ch. 270, §22 and Section 4(c) of this regulation.

SECTION 5: ENFORCEMENT

(1) An owner, manager, or other person in control of a building, vehicle or vessel who violates this section, in a manner other than by smoking in a place where smoking is prohibited, shall be punished by a fine of:

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- a. \$100 for the first violation;
 - b. \$200 for a second violation occurring within two (2) years of the date of the first offense; and
 - c. \$300 for a third or subsequent violation occurring within two (2) years of the second violation.
- (2) Each calendar day on which a violation occurs shall be considered a separate offense.
 - (3) This regulation shall be enforced by the Board of Health and its designees.
 - (4) Violations of Section 4(b) shall be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law without an enabling ordinance or by-law. The disposition of fines assessed shall be subject to Section 188 of Chapter 111.
 - (5) Violations of Sections 4(a), 4(c) and 4(d) may be disposed of by a civil penalty using the non-criminal method of disposition procedures contained in Section 21D of Chapter 40 of Massachusetts General Law.
 - (6) If an owner, manager or other person in control of a building, vehicle or vessel violates this regulation repeatedly, demonstrating egregious noncompliance as defined by regulation of the Department of Public Health, the Board of Health may revoke or suspend any Board of Health-issued permit to operate and shall send notice of the revocation or suspension to the Department of Public Health.
 - (7) Any person may register a complaint to initiate an investigation and enforcement with the Board of Health, the local inspection department or the equivalent.

SECTION 6: SEVERABILITY

If any paragraph or provision of this regulation is found to be illegal or against public policy or unconstitutional, it shall not effect the legality of any remaining paragraphs or provisions.

SECTION 7: CONFLICT WITH OTHER LAWS OR REGULATIONS

Notwithstanding the provisions of Section 4 of this regulation nothing in this regulation shall be deemed to amend or repeal applicable fire, health or other regulations so as to permit smoking in areas where it is prohibited by such fire health or other regulations.

SECTION 8: EFFECTIVE DATE

This regulation shall be effective as of _____, 2015.

TOBACCO POLICIES AVAILABLE TO MUNICIPALITIES - 2014

POLICY PROPOSAL	POLICY SUMMARY	PUBLIC HEALTH EFFECT	BUSINESS EFFECT	MA. MUNICIPALITIES WITH THIS POLICY
Regulate e-cigarettes the same as tobacco products (sales)	E-cigarette vendors will need a permit; cannot sell to youth; no vending machines or self-service displays.	Reduce youth nicotine addiction through e-cigarettes; penalties for retailers who sell to minors.	Will not reduce sales for those retailers who made the business decision to sell only to adults. Those who sold to minors will lose sales.	139
Cessation sign requirement (sales)	Requires permit holders to post a sign that indicates the state's toll-free Quitline for smokers who are contemplating a quit attempt.	Provides a visual reminder to smokers that the state provides telephone counseling for free.	Signage is provided free by the state to cities and towns for distribution to retailers.	76
Regulate cigar pricing and packaging (sales)	Single cigar must be sold for at least \$2.50. All cigar multipacks must be sold for at least \$5.00, regardless of price imprinted by manufacturer.	Will counter Mass. statistics showing youth using more cigars than cigarettes because they are far cheaper.	No data from retailers though Boston in effect since 2012. While drop in sales may occur, those sales will have higher profit margin. May be a "wash".	79 49 with original policy (no 4+-pack min. price set) 30 with this proposed policy (min. price set for all cigars)
Capping the number of Tobacco Sales Permits issued (sales)	Limits the number of permits to be issued at any one time. When the cap is reached, a waiting list is to be established.	Stabilizes density much the same way liquor licensing schemes do. Makes current permits more "valuable", resulting in better compliance from finite retailer pool.	Does not interfere with either current permit holders or the buyers of a business with a valid permit.	41 NOTE: Some of these municipalities have language that reduces permit numbers over time.
Ban flavored tobacco and e-cigarette products except in certain locations (mimics federal court-approved Providence ordinance). Note that menthol/mint is NOT a flavor per US FDA. (sales)	Expands 2009 federal ban on the sale of flavored cigarettes to all other tobacco products and e-cigarette nicotine solutions except in adult-only retail tobacco stores/vape stores/hookah and cigar bars.	Honors the rationale behind the federal flavored cigarette ban by extending it to kid-friendly flavored products but still allows the sale of such items in adult-only establishments.	The exempted businesses will be able to sell all flavors but will have to bar entry and sales by youth. All other vendors will be able to still sell plain tobacco flavor and menthol/mint flavors.	9 (and Providence, RI) Mass. municipalities were deterred from enacting policy until Providence fed. court case was decided in February 2014.
Raise the Minimum Legal Sales Age (MLSA) from 18 to 21 (sales)	"The minimum legal sales age in Lawrence is 21" This includes both tobacco products and nicotine delivery products.	Eliminates "of age" high school students buying tobacco for underaged peers. Delays any smoking start by 3 years and should eliminate early teen use.	Customers aged 18, 19 and 20 will no longer be tobacco customers. No data available from stores in "age 21" cities and towns.	43 (38=age 21; 5=age 19) Needham first with effective date of April of 2005
Ban the sale of blunt wraps (sales)	No sales of "any tobacco product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from tobacco that is designed or intended to be filled by the consumer with loose tobacco or other fillers."	Reduces nicotine addiction onset through a product almost exclusively used for illegal drug delivery. Low price and variety of flavors are attractive to youth.	Businesses will have to stop selling this line of tobacco. Boston's ban upheld by the MA Supreme Judicial Court. Police usually like this ban due to the illegal drug delivery nature.	93
Ban redemption of certain coupons for tobacco (mimics federal court-approved Providence ordinance) (sales)	Ban coupon redemption for cigarettes that would drive the price below the state-set minimum price and bans coupon redemption for free non-cigarette tobacco items.	Long-held data shows that increased cigarette prices reduces consumption and prompts smokers to quit. Free tobacco products encourages new users.	Helps tobacco manufacturers and not retailers. Coupons do not assist any one type of retailer.	85
Ban self-service displays (sales)	Eliminates customer ability to self-select a tobacco product without clerk assistance. Expansion to include e-cigarettes is important to reduce youth use.	Reduces theft of tobacco products. Adds a step to purchase process which reduces illegal sales.	Mass. Attorney General regulations limit displays. General business consensus has done away with these displays.	207

Ban vending machines (sales)	Eliminates tobacco sales through vending machines.	Requires face-to-face transaction with a clerk which reduces youth sales. US FDA regulations limit them to establishments that never permit minors to enter.	Mass. Attorney General regulations limit location of machines. Very few machines still exist. Those remaining machines often in private clubs but still may violate the FDA regulations.	184
Ban non-residential Roll-Your-Own machines (sales)	Eliminates a loophole in federal law that allows RYO private clubs to sell cheap cigarettes	Long-held data shows that increased cigarette prices reduces consumption and prompts smokers to quit.	Helpful to business to not have a "private club" competitor undercutting their cigarette prices. Allows RYO machine sales for home use.	110
Ban the sale of tobacco and e-cigarettes in health care institutions including pharmacies (sales)	Bans the sale of these products in doctor and dentist offices, hospitals, clinics, pharmacies and any location that fits definition	De-couples the sale of a dangerous product (tobacco) with the sale of medications or health care delivery.	Any location that is considered a "health care institution" will no longer be issued a local tobacco sales permit	106 Boston first with effective date of 2/11/09
Ban the sale of tobacco and e-cigarettes in educational institutions (sales)	Bans the sale of these products in colleges, universities, trade schools or any location that fits definition	De-couples the sale of tobacco in learning institutions usually populated with students in their late teens and early 20's	Any location that is considered an "educational institution" will no longer be issued a local tobacco sales permit	<u>107</u> Boston first with effective date of 2/11/09
Expand tolling period (sales)	Expansion from 12 to 24 months will require retailers to abide by ordinance to avoid repeat offender penalties which may include permit suspension.	With fewer compliance checks per year, retailers may consider one fine per year as "cost of doing business". This increase will foster compliance.	As Worcester has had a tobacco ordinance since 1996, retailers should be well aware that they must card suspect customers. Those in compliance will see no change due to this tolling period expansion.	24 months = 75 36+ months = 45
E-cigarette usage limited (ETS)	Bans e-cigarette use in those locations that are required to be smoke-free by either state law or Worcester ordinance	The safety of the exhaled vapor from an e-cigarette user is unknown, especially if the e-cigarette solution is "home-grown".	No effect for retailers, restaurants and bars. Assists workplaces not knowing what to do about employee "vaping".	77
Smoking ban for certain outdoor locations (ETS)	Bans smoking in parks, playgrounds, non-school athletic fields and beaches	Further denormalizes tobacco use where youth congregate and recreate. Reduces cigarette butt trash.	No effect.	Parks = 34 Playgrounds = 34 Beaches = 36 Athletic Fields = 30
Expand existing smoke-free buffer zone (ETS)	Bans smoking on library property. Expands health care institution no-smoking buffer zone to 200 feet and allows for expanded enforcement.	Reduces second-hand smoke exposure by patients, their families and health care professionals while entering/exiting facilities.	No effect.	
Ban smoking in "smoking bars" (ETS)	Bans smoking in the indoor space of both cigar bars and hookah bars.	Eliminates second-hand smoke when these bars are located in multi-use buildings. Hookah bars are popular with college-age group. Hookah presents other sanitary code issues. Breaks "level playing field" that restaurants and bars must abide by.	Business viability seriously compromised with this policy and is not recommended in municipalities that already have cigar bars or hookah bars in operation.	89
Ban smoking in "retail tobacco establishments" (ETS)	Bans smoking in the indoor space of tobacconists, smoke shops, cigar shops	Eliminates second-hand smoke when these stores are located in multi-use buildings. Thwarts "mini-casino" problem with Keno	Potential customers who want to "test" fine tobacco before purchase will need to step outside to do so.	38



CITY OF MARLBOROUGH

BOARD OF HEALTH

140 Main Street, Lower Level
Marlborough, Massachusetts 01752
Facsimile (508) 460-3625 TDD (508) 460-3610

James Griffin, Chairman
John Curran, MD, Member
Robin Williams, Member
Tel (508) 460-3751

December 15, 2014

Dear Community Stakeholder,

Re: **Proposed Tobacco Control Regulations**

The Marlborough Board of Health is entertaining the adoption of the following tobacco related regulations:

“City of Marlborough Regulation Prohibiting Smoking in Workplaces and Public Places”,
and:

“Regulation of the Marlborough Board of Health Restricting the Sale of Tobacco Products”

As a valued community stakeholder the Board of Health is soliciting your review and comments on these proposed regulations. “Attached please find the “Tobacco Policies Available to Municipalities – 2014” document that outlines the important policy proposals contained in each of these regulations. Please feel free to submit verbal and/or or written testimony on either or both proposed regulations to the Board of Health. The Board of Health anticipates that a public hearing will be held at their February 3, 2015 Board of Health meeting to consider the adoption of these regulations. I look forward to contacting you in the near future to discuss these proposed regulations.

In the interim should you have any questions concerning this matter please feel free to contact this office at 508-460-3751.

Sincerely,

Steven J. Ward, MPH, CHO
Interim Director of Public Health

CC: File



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BOARD OF HEALTH

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James Griffin, Chairman
John Curran, MD, Member
Robin Williams, Member
Tel (508) 460-3751

December 29, 2014

Dear Community Stakeholder,

Re: **Proposed Tobacco Control Regulations**

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“City of Marlborough Regulation Prohibiting Smoking in Workplaces and Public Places”,
and:
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James Griffin, Chairman
John Curran, MD, Member
Robin Williams, Member
Tel (508) 460-3751

January 14, 2015

Dear Tobacco Vendors,

Notice is hereby given that a Public Hearing will be held at Marlborough High School (431 Bolton Street, Marlborough, MA 01752) on February 3, 2015 at 6:30 pm at the Science Lecture Hall on the third floor, Science Wing to review and hear comments relative to proposed Board of Health Regulation entitled Restricting the Sale of Tobacco Products and Nicotine Delivery Products and Regulation Prohibiting Smoking in Workplaces and Public Places. Proposed policies in the draft regulation include, but are not limited to, expanding regulation to include Nicotine Delivery Products and electronic cigarettes, cessation sign posting, cigar minimum packaging/pricing, roll-you-own machine ban, defining minor as those under 21 years of age, banning of smoking bars, banning smoking in public parks, banning smoking in outdoor restaurant seating areas, banning smoking in public transportation, tobacco sales ban in health care institutions including pharmacies, tobacco sales ban in educational institutions including colleges/universities, banning distribution of blunt wraps, and capping the number of retail tobacco sales permits. Proposed regulation is enclosed.

Sincerely,

Steven J. Ward, MPH, CHO
Interim Director of Public Health

Enclosure

PUBLIC HEALTH NURSE REPORT FOR JANUARY, 2015

TB CONTROL

MANTOUX TESTING

10 tests were given: 8 negative; 2 positive and referred to Getchell

CLASS II (Latent TB Infection)

Currently there are **21** cases being followed for clinic visits and medication compliance.

Currently there are **7** cases in various stages of referral.

CLASS III (ACTIVE TB)

A 35 year old woman from India continues with DOT 5 times a week.

CLASS III (ACTIVE TB)

A 34 year old male who we have been following for active tuberculosis receives DOT 1 day a week. Due to his work schedule.

CLASS III (ACTIVE TB)

60 year old Haitian Creole speaking male living in Paris, France, was traveling from Haiti to France and became involved in an altercation with a passenger and staff while in flight. Because no other airport would accept him, he arrived at Logan under house arrest. He was taken to MGH 8/28-9/17 and had very extensive testing. PMH of diabetes and hypertension. He was tested for TB. His sputum smear was negative and his lymph nodes biopsy was positive for AFB. He is living in Marlborough with a friend who is an RN and his interpreter. He was started on TB meds October 23rd and received DOT 5 times a week. His visits have now been reduced to 2 times a week. He will remain in Marlborough under house arrest until his court appearance in January.

Immunizations

Given in the BOH office:

Td - 3	MMR – 7
IPV (polio) – 4	Flu - 5
Tdap – 8	HepB – 7
VAR – 10	

Total given: 44

Clinics every Tuesday 2:00 pm – 4:00 pm

Reportable Diseases

Line Lists

Line Lists are reports of diagnosed cases received by the BOH from the Department of Public Health. Case reports are to be completed by the Primary Care Physician. No follow up is required by the BOH.

Line List reports from the Department of Public Health:

Lyme – 1
Hep B - 1
Hep C – 3
Flu – 32 (as of 1/26/15)
FBI – from a complainant from Hudson concerning a local Marlborough restaurant

Clinics

City Employee and Family Flu clinic – Thursday, January 29th 2-4 pm


Trainings & Meetings

Nancy: Jan. 14 – Ebola conference call
Jan. 15 – Region 4A Emergency Preparedness Meeting
Jan. 20 – CPR Recertification

Jan. 21 – MetroWest Prevention and Wellness Planning Grant
Jan. 29 – Ebola Conference call

Nicole: Jan. 14 – Ebola conference call
Jan. 15 – Region 4A Emergency Preparedness Meeting
Jan. 20 – CPR Recertification
Jan. 21 – MetroWest Prevention and Wellness Planning Grant
Jan. 29 – Ebola Conference call

Respectfully submitted,



Nancy Cleary, RN
Nicole Isabelle, BSN RN
Public Health Nurses